

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Part 2 of the Commission's Rules)	ET Docket No. 00-258
to Allocate Spectrum Below 3 GHz for Mobile)	
and Fixed Services to Support the Introduction of)	
New Advanced Wireless Services, including Third)	
Generation Wireless Systems)	

To: The Commission

COMMENTS OF PCIA, THE WIRELESS INFRASTRUCTURE ASSOCIATION

PCIA, the Wireless Infrastructure Association ("PCIA"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules,¹ hereby files comments in response to the Third Notice of Proposed Rulemaking ("Third NPRM"), FCC 03-16, released February 10, 2003.² These comments address the manner in which new licensees are to share with each other the cost of relocation of incumbent licensees.³ PCIA proposes the establishment of a band-clearing cost-sharing clearinghouse for the new frequency bands allocated to Advanced Wireless Services ("AWS") to (1) facilitate the relocation of incumbent licensees, resulting in rapid deployment of AWS, (2) ensure systematic and equitable cost-sharing for the relocation of incumbent licensees,

¹ 47 C.F.R. § 1.415. All references to the Commission's Rules are cited at 47 C.F.R. §§ 0.1 *et seq.*

² A notice summarizing the Third NPRM was published at 68 Fed. Reg. 12015, March 13, 2003.

³ On February 7, 2003, PCIA filed Comments in response to the Notice of Proposed Rulemaking issued in *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, FCC 02-305, released November 22, 2002. On February 24, 2003, PCIA filed a Petition for Partial Reconsideration of the Second Report and Order issued in the captioned proceeding, FCC 02-304, released November 15, 2002. The February 7, 2003 comments and the February 24, 2003 petition both address issues similar to those discussed herein.

and (3) minimize the Commission's burden of resolving cost-sharing disputes among new AWS licensees.

I. PCIA

From its beginnings in land mobile radio to paging and messaging, and from personal communications services ("PCS") to tower and antenna siting, PCIA has been instrumental in facilitating the emergence and growth of core wireless services. Since the inception of Commission procedures for relocating incumbent point-to-point microwave licensees in the frequency bands allocated for PCS, PCIA has operated a Microwave Clearinghouse to administer the Commission's relocation cost-sharing plan. The PCIA Microwave Clearinghouse maintains all of the cost and payment records related to the relocation of each incumbent microwave link and determines the cost-sharing obligations of subsequent PCS licensees. The procedures used by PCIA's Microwave Clearinghouse have worked extremely well, facilitating the rapid deployment of service by new PCS licensees.

II. Cost-Sharing Procedures for PCS

The cost-sharing procedures for relocation of microwave incumbents are found in Sections 24.239 through 24.253 of the Commission's Rules. Pursuant to these procedures, the PCS licensees who arrange and pay for the relocation of a microwave incumbent are entitled to reimbursement from all of the other PCS licensees who later benefit from the relocation of the microwave incumbent. The process is not as simple as one PCS licensee sharing costs 50-50 with the PCS licensee operating on the return path of the microwave link because a microwave path can cross multiple markets. Even where a microwave path does not cross multiple markets, it could still be positioned in such a way that it could either receive interference from or cause interference to multiple markets. Therefore, it is often the case that there are more than two PCS

licensees who benefit from the relocation of an incumbent two-way microwave path, and there can even be two or more PCS licensees who benefit from the relocation of a one-way microwave path.

In addition, the Commission's rules provide for a monthly reduction, over a 120 month period, in the reimbursement amount owed to the PCS licensees who pay for clearance of the microwave path. This reduction accounts for the concept that those PCS licensees who go into service earlier receive a greater benefit from the path clearance than those who go into service later. There is no cost-sharing after ten years (120 months) because there is no obligation to reimburse microwave incumbents for relocation costs after ten years.

III. Cost-Sharing Procedures for AWS

The combined Third Report and Order ("Third R&O"), Third NPRM and Second Memorandum Opinion and Order ("Second MO&O") discuss incumbent licensee relocation procedures and cost-sharing. In paragraph 37 of the Third R&O, in the context of addressing reallocation of the 1990-2000/2020-2025/2165-2180 MHz bands, the Commission stated that it was not reaching decisions regarding relocation of incumbent users of the local television transmission service, the cable television relay service and broadcast auxiliary stations (collectively "BAS") and terrestrial fixed services ("FS"), but would address those issues in a further proceeding. This point was reiterated regarding the 1990-2000 MHz band in paragraph 56 of the Third NPRM. PCIA is offering comments regarding relocation procedures for these bands to assist the Commission in its development of a further notice.

Later on in the Third NPRM, the Commission noted that UTAM, Inc. ("UTAM") has cleared most of the 1910-1920 MHz band as part of the process of clearing the 1920-1930 MHz band to accommodate the isochronous unlicensed PCS ("UPCS") devices using the 1920-1930

MHz band and in anticipation of potential asynchronous UPCS devices using the 1910-1920 MHz band. Third NPRM at para. 56. Specifically, UTAM stated that it has cleared 91 percent of the microwave facilities from the 1910-1920 MHz band and has not recovered any of its band clearing expenses associated with that band. Third NPRM at paras. 57-58. The Commission is proposing that UTAM be reimbursed pro rata for its band clearing expenses based upon the percentage of UPCS spectrum ultimately reallocated to other uses and is seeking comment on how UTAM should be reimbursed. Third NPRM at paras. 59-61.

In paragraph 64 of the Third NPRM, the Commission noted that the 2160-2165 MHz band is currently used by non-Federal government users for fixed and mobile services and incumbent users are subject to relocation procedures. The Commission also discussed the relocation of Multipoint Distribution Service (“MDS”) licensees using the 2150-2160/62 MHz band and is seeking comment on those issues. Third NPRM at paras. 71-73.

The instant comments focus on the narrow issue of the need for a band-clearing cost-sharing clearinghouse. It is important to recognize that multiple AWS licensees can benefit from clearing the spectrum of a particular incumbent licensee. Each AWS user will be licensed for a particular geographic service area within its frequency block. As a result, like the situation in PCS, there can be multiple AWS licensees that could cause interference to or receive interference from a single incumbent licensee. This is true whether the incumbent licensees are BAS, FS or MDS. In the case of spectrum already cleared by UTAM, UTAM can expect reimbursement from numerous AWS licensees, and procedures need to be developed to fairly reimburse UTAM. Therefore, PCIA proposes that the Commission establish cost-sharing procedures for all AWS bands similar to the cost-sharing procedures established by the

Commission for PCS that are found in Sections 24.239 through 24.253 of the Commission's Rules.

In this regard, just as the Commission saw the benefits and need to establish a clearinghouse to administer a complicated (but fair and necessary) cost-sharing formula used for PCS licensees, the benefits and need for a clearinghouse are equally applicable to all AWS bands. The PCIA Microwave Clearinghouse fairly administered the cost sharing formula for PCS licensees, and there were very few disputes among licensees caused by the cost-sharing procedures. As a result, the PCS industry was able to initiate service on a timely basis and provide much needed competition and new innovation for consumers of mobile wireless services.

IV. Conclusion

In view of the foregoing, PCIA requests that the Commission provide for band-clearing cost-sharing procedures for Advanced Wireless Services similar to those in effect for PCS licensees, including the establishment of clearinghouse similar to PCIA's Microwave Clearinghouse.

Respectfully submitted,

PCIA, the Wireless Infrastructure Association

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